

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201125002**

Release Date: 6/24/2011

Index Number: 9100.00-00, 469.00-00,
469.03-00, 469.03-03

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B02
PLR-104639-11
Date: March 18, 2011

Legend

Taxpayer =

Year 1 =

Dear :

This responds to a letter dated January 21, 2011, and subsequent correspondence, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to file an election under § 469(c)(7) of the Internal Revenue Code and § 1.469-9(g)(3) of the Income Tax Regulations to treat all interests in rental real estate as a single rental real estate activity.

The information and representations submitted state that Taxpayer in Year 1 was in a real property business as defined by § 469 and was qualified under § 469(c)(7)(B) to make an election to treat all interests in rental real estate as a single rental real estate activity. However, Taxpayer filed Taxpayer's return for Year 1 without the statement required under § 1.469-9(g)(3).

Under § 469(c)(2), the term "passive activity" generally includes any rental activity. Section 469(c)(7) provides a limited exception to this rule for taxpayers in a real property trade or business. Specifically, § 469(c)(7)(A) indicates that if a taxpayer meets the requirements of section 469(c)(7)(B), the taxpayer's rental real estate activity will no longer be presumptively passive. By its terms, the exception under § 469(c)(7)(A) is to be applied as if each interest of the taxpayer in rental real estate were a separate activity. However, a taxpayer may elect to treat all interests in rental real estate as a single activity.

Section 1.469-9(g)(3) provides that a qualifying taxpayer makes the election to treat all interests in rental real estate as a single rental real estate activity by filing a statement with the taxpayer's original income tax return for the taxable year. Section 1.469-9(g)(3) describes the information that must be contained in the statement.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term "regulatory election" as including an election whose due date is prescribed by a regulation published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election.

Section 301.9100-2 provides the rules governing automatic extensions of time for making certain elections. Section 301.9100-3 provides the standards the Commissioner will use to determine whether to grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3 provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election, the taxpayer will be deemed to have acted reasonably and in good faith.

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. As a result, Taxpayer is granted an extension of time of 120 days from the date of this letter to make an election under § 469(c)(7)(A) to treat all of Taxpayer's interests in rental real estate as a single rental real estate activity effective Year 1. The election must be in the form of the statement required by § 1.469-9(g)(3) and attached to an amended return for Year 1. A copy of this letter should be attached to the election. A copy is enclosed for that purpose.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the

Code. Specifically, no opinion is expressed concerning whether Taxpayer satisfies the requirements under § 469(c)(7)(B) or whether Taxpayer materially participates in any activity.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2):

Copy of this letter

Copy for § 6110 purposes